

CALIFORNIA GAMBLING CONTROL COMMISSION
LEGAL DIVISION MEMORANDUM



Public Staff Report

Date: July 30, 2008

From: Heather Cline Hoganson, Staff Counsel Specialist
Herb Bolz, Acting Chief Counsel

Subject: Adoption of Regulations Regarding Licensure
(Withdrawal, Abandonment, Denial)

Recommendation: **ADOPT** the proposed regulations and direct staff to make any nonsubstantive changes to the regulations and supporting text as required by the Office of Administrative Law in during its review process.

Summary:

The proposed rulemaking package regarding the licensure process, including hearing procedures on recommended denials, would affect any applicant for a Commission work permit, finding of suitability, registration, key employee license, or state gambling license.

Background:

Staff first proposed the subject regulations in 2005, and has worked with representatives from the industry and from the Bureau of Gambling Control on refining the language of the text and processes involved.

Formal notice under the Administrative Procedure Act was originally given on October 13, 2006, and a public hearing was held that November. Based upon comments received at the public hearing and in the written comment periods, as well as changes in Commission and Bureau processes, two additional comment periods were held in 2007 on modified texts of the regulations.

The Administrative Procedure Act provides that a rulemaking action must be completed within one year of notice. Because of the changes involved in this rulemaking, the one-year period (October 13, 2006-2007) was exceeded. Therefore, a new formal notice was published on November 30, 2007. Two modifications with comment periods ensued, based upon written input received and process changes.

Staff recommends that the Commission adopt the proposed text dated June 30, 2008.

Staff Analysis:

The revised rulemaking package consists of five separate regulations in two separate chapters. The first four regulations are proposed in Chapter 1, General Provisions. These four regulations would apply to most of the Commission's regulated community. The fifth regulation is proposed for Chapter 6, State Gambling Licenses and Approvals for Gambling Establishments, Owners, and Key Employees. This regulation would only be applicable to key employees and owners of gambling establishments. Details regarding each regulation were provided in the Initial Statement of Reasons (which was sent to the Commission's rulemaking mailing list and is available on the Commission web site).

Regulation 12002 clarifies the definition of Executive Director.

Regulation 12047 provides a process for withdrawal. This is helpful when applicants are no longer employed by a particular casino or cardroom and wish to withdraw their applications. Staff resources can then be concentrated on applications for those who continue to work. Direction regarding deposits and clarification regarding whether or not a withdrawal is "with prejudice" or "without prejudice" is included.

Regulation 12048 provides a process to administratively deem abandoned a specific application. This is helpful when applicants may no longer be employed by a particular casino or cardroom or are otherwise not able to be reached to complete the investigation process. Staff resources can then be concentrated on applications for those who continue to work.

Regulation 12050 contemplates the proposed denial or proposed conditions to be imposed upon a license, based upon recommendations by the Bureau and/or by Commission staff, and provides an opportunity for notice and hearing before the Commission makes a final decision. It details consequences of a denial for specified applicants, such as general partners or officers of corporations. It also clarifies the judicial review available to applicants who have been denied or who dispute conditions which have been imposed on a license. Most of the modifications of text have occurred with the language of this regulation.

Regulation 12348 details when a state gambling license or key employee license must be denied (mandatory) or may be denied (discretionary). Provisions regarding *ex parte* communications are referenced in this regulation.

Conclusion:

Staff recommends adoption of these regulations to provide due process and to clarify the Commission's procedures regarding withdrawal, abandonment, and denial of applications.

Chapter 1. General Provisions

12002. General Definitions

Unless otherwise specified, the definitions in Business and Professions Code section 19805, supplemented by the definitions found in Chapter 10 of Title 9 of Part 1 of the Penal Code (commencing with section 330), shall govern the construction of this division. As used in this division:

~~(a) "Bureau" means the Bureau of Criminal Identification and Information Gambling Control in the California Department of Justice. For the filing of any reports or forms, Bureau refers to the Sacramento office of the Bureau of Gambling Control.~~

Note to Reader: The Bureau of Criminal Identification is now referred to as BCII. A technical change in the Commission's regulations from "Division" to "Bureau" is being processed. Therefore, these regulations refer to the Bureau of Gambling Control as Bureau.

....

(g) "Executive Director" means the executive officer of the Commission, as provided in Business and Professions Code section 19816 or his or her designee. If the Executive Director position is vacant, the "Executive Director" means the officer or employee who shall be so designated by the Commission.

....

Authority: Sections 19811, 19823, 19824, 19840, 19841, 19853(a)(3), and 19854, Business and Professions Code; Section 7, Government Code.

Reference: Sections 7.5, 19800, 19805, 19811, 19816, and 19951, Business and Professions Code.

12047. Withdrawal of Applications

A request by an applicant to withdraw the submitted application may be made at any time prior to the final action by the Bureau. The request shall be made in writing to the Commission. The Commission, pursuant to Business and Professions Code section 19869, may deny the request or may grant the request, with or without prejudice.

(a) If a request for withdrawal is granted without prejudice, any unused portion of the background investigation deposit shall be refunded by the Commission.

(b) If a request for withdrawal is granted with prejudice, the applicant shall not be eligible to apply again for licensure or approval until after the expiration of one year from the date the request for withdrawal is granted. Any unused portion of the background investigation deposit shall be refunded by the Commission.

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(c) If the request for withdrawal is denied, the Bureau shall proceed with the investigation of the applicant and provide a recommendation to the Commission for action on the application.

Authority: Business and Professions Code Sections 19811, 19823, 19824,19840, 19841, 19893, and 19951.

Reference: Business and Professions Code Sections 19859, 19867, 19869, 19880, 19881, 19890, 19891, 19951, and 19984.

12048. Abandonment of Applications

At any time prior to final Commission action, the Executive Director may preliminarily determine that the application is abandoned. Such ~~preliminarily~~ **preliminary** determination may be based upon recommendation of the Bureau, failure of the applicant to respond to Bureau or Commission inquiries, or notification by the applicant that the application is no longer being pursued. If the determination is not based upon applicant's notice to the Commission, then notice will be sent to the applicant, with a copy to the applicant's employer by certified mail indicating that unless the applicant contacts the Commission within 30 days from the date of the letter, the application shall be deemed abandoned. An abandoned application cannot be reactivated.

Authority: Business and Professions Code Sections 19811, 19823, 19824,19840, 19841, 19893, and 19951.

Reference: Business and Professions Code Sections 19859, 19867, 19869, 19880, 19881, 19890, 19891, and 19951.

12050. Hearing Procedures; Appeal of Denial of **or Imposition of Conditions on application for license, permit, or request for finding of suitability.**

(a) **If the Bureau, after an investigation pursuant to Business and Professions Code section 19826, subdivision (a), issues a recommendation to deny, limit, restrict, or condition a license, permit, or finding of suitability, the Bureau shall provide the applicant with a ~~summary~~ **copy** of the Bureau's final report **as described in Business and Professions Code section 19868, subdivision (b), which includes a detailed factual and/or legal basis for any recommendation as well as the Bureau's recommendation to the Commission and any supplemental documents provided to the Commission at the time of the report and recommendation, not less than 30 days prior to the Commission meeting.****

Any applicant for any license, permit, or finding of suitability for whom Commission staff has issued a recommendation of denial or imposition of conditions shall be given notice by certified mail of the Commission meeting at which the application is scheduled to be heard and the Commission staff recommendation at least 10 days

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1 prior to the meeting. ~~Further, the Bureau shall provide the applicant with a~~
2 ~~summary of the Bureau's final report which includes a detailed factual and/or legal~~
3 ~~basis for any recommendation and the Bureau's recommendation, if any, not less~~
4 ~~than 30 days prior to the Commission meeting.~~ The applicant shall be afforded the
5 opportunity to:

6 (1) Address the Commission by way of an oral statement at a noticed Commission
7 meeting, and/or may submit documents in support of the application, or

8 (2) Request an evidentiary hearing.

9 (b) If the applicant requests an evidentiary hearing or the Commission elects to have an
10 evidentiary hearing, the Executive Director shall set the matter for hearing pursuant
11 to Business and Professions Code sections 19870 and 19871, or pursuant to
12 Business and Professions Code section 19825 (~~which will be~~ conducted pursuant to
13 Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the
14 Government Code).

15 (1) If the hearing is to proceed pursuant to Business and Professions Code section
16 19825 (Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of
17 Title 2 of the Government Code; California Code of Regulations, title 1, section
18 1000 et seq.), the hearing shall be before an administrative law judge sitting on
19 behalf of the Commission. Notice shall be effected pursuant to Government
20 Code section 11500 et seq.

21 (2) If the hearing is to proceed pursuant to Business and Professions Code
22 sections 19870 and 19871, notice shall be effected by the Commission, and the
23 hearing before the Commission shall be conducted pursuant to Business and
24 Professions Code section 19871:

25 (A) The Bureau or Commission staff or Deputy Attorney General or other
26 representative presenting the case (Complainant) shall provide the
27 applicant, at least 30 calendar days prior to the hearing, a list of potential
28 witnesses with the general subject of the testimony of each witness and
29 shall disclose and make available copies of all documentary evidence
30 intended to be introduced at the hearing and not previously provided,
31 reports or statements of parties and witnesses and all other writings
32 containing relevant evidence, including all evidence made available to the
33 Commissioners. The applicant shall provide Complainant with similar
34 information to be introduced at the hearing and not previously provided at
35 least ten calendar days prior to the hearing. The Commissioners may
36 prohibit testimony of a witness that is not disclosed and may prohibit the
37 introduction of documents that have not been disclosed.

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- 1 (B) Nothing in this section confers upon an applicant a right to discovery of the
2 Commission's or Bureau's confidential information or to require production
3 of any document or information the disclosure of which is otherwise
4 prohibited by any provision of the Gambling Control Act, or is privileged
5 from disclosure or otherwise made confidential by law. Documentary
6 evidence may be redacted as needed to prevent the disclosure of
7 confidential information. Exculpatory or mitigating information shall not be
8 withheld from the applicant, but may be redacted.
- 9 (C) Within the guidelines of subsection (b)(2)(A) above, each party shall have
10 the right to call and examine witnesses; to introduce relevant exhibits and
11 documentary evidence; to cross-examine opposing witnesses on any
12 relevant matter, even if the matter was not covered in the direct
13 examination; to impeach any witness, regardless of which party first called
14 the witness to testify; and to offer rebuttal evidence. If the applicant does
15 not testify on the applicant's own behalf, the applicant may be called and
16 examined as if under cross-examination.
- 17 (D) The hearing need not be conducted according to technical rules of
18 evidence. Any relevant evidence may be considered, and is sufficient in
19 itself to support findings if it is the sort of evidence on which responsible
20 persons are accustomed to rely in the conduct of serious affairs,
21 regardless of the existence of any common law or statutory rule that might
22 make improper the admission of that evidence over objection in a civil
23 action. A presiding officer, which shall be an administrative law judge or
24 an attorney designated by the Commission, shall rule on the admissibility
25 of evidence and on any objections raised.
- 26 (E) Oral evidence shall be taken upon oath or affirmation, which may be
27 administered by a staff member of the Commission or by a Commissioner.
- 28 (F) The hearing shall be stenographically or electronically recorded by the
29 Commission.
- 30 (G) At the conclusion of the hearing, the Commission shall take the matter
31 under submission and may schedule future closed session meetings for
32 deliberation. In taking the matter under consideration, any Commissioner
33 who participated at the hearing shall be allowed to vote by mail or by other
34 appropriate method. Within 30 days of the conclusion of the hearing, the
35 Commission shall issue a decision which complies with Business and
36 Professions Code section 19870, subdivision (c), and shall serve the
37 decision by certified mail on the applicant and on any business entity with
38 which the applicant is associated.

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- (3) At the hearings described in subsections (b)(1) and (2) above, the burden of proof rests with applicant to demonstrate why a license, permit, or finding of suitability should be issued or not conditioned. The applicant may choose to represent himself, herself, or itself, or may retain an attorney or lay representative at his, her, or its own expense. A representative of the Bureau shall present the reasons why the license, permit, or finding of suitability should not be granted or should be granted with conditions imposed. In the event that the Bureau does not present the case, the Commission may seek outside representation or one or more Commission staff members shall be segregated and present the case.
- (c) If the application is denied or conditions imposed:
- (1) The Commission's decision ~~will~~ shall provide the effective date of the decision and may include further directions as to stay provisions or orders to divest.
- (2) If the denied applicant is an officer, director, employee, agent, representative, or independent contractor of a corporation licensed, registered, or found suitable by the Commission, the denied applicant shall resign ~~pursuant~~ according to the date specified in the decision and shall so notify the Commission in writing.
- (3) If the denied applicant is an officer or director of a corporation licensed, registered, or found suitable by the Commission, the corporation shall immediately remove that person from office and shall so notify the Commission in writing. If the denied applicant is an employee, agent, representative, or independent contractor of a corporation licensed, registered, or found suitable by the Commission, the corporation shall terminate its relationship with that person pursuant to the date specified in the decision and shall so notify the Commission in writing. The denied applicant and the corporation licensed, registered, or found suitable by the Commission shall comply with Business and Professions Code section 19882.
- (4) If the denied applicant is ~~an owner or holder of an interest~~ a general or limited partner in a general or limited partnership licensed, registered, or found suitable by the Commission, the denied applicant shall resign as partner. If the denied applicant is an owner or holder of an interest in a limited partnership licensed, registered, or found suitable by the Commission, the denied applicant and the limited partnership shall comply with Business and Professions Code section 19892 and shall so notify the Commission in writing.
- (5) If the denied applicant is a principal in a business entity not otherwise described above which is licensed, registered, or found suitable by the Commission ~~not otherwise described above~~, the denied applicant shall resign his or her position within that entity and divest whatever interest is held in that entity pursuant to the timelines and instructions specified in the decision, and shall so notify the

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Commission in writing. The business entity shall remove the denied applicant from any principal role in the business entity and shall so notify the Commission in writing.

(6) An applicant denied a license, permit, registration, or finding of suitability, or whose license, permit, registration, or finding of suitability has had conditions imposed upon it may request reconsideration by the Commission within 30 days of notice of the decision. The request shall be in writing and shall outline the reasons for the request, which must be based upon either newly discovered evidence or legal authorities that could not reasonably have been presented before the Commission's issuance of the decision or at the hearing on the matter, or upon other good cause for which the Commission in its discretion decides merits reconsideration. The Commission Chair may delegate to the Executive Director the ~~determination of~~ authority to determine whether to place requests for reconsideration on the Commission agenda or to act on them at the Commission staff level. If placed on the Commission agenda, the applicant requesting reconsideration shall be notified of the date and time of the agenda item. The granting or denial of reconsideration is at the discretion of the Commission. The Commission shall notify the applicant requesting reconsideration whether or not reconsideration is granted or denied within 30 days of the applicant's request. If the Commission grants reconsideration, the effective date of the decision shall be stayed or vacated, at the Commission's discretion, while the decision is reconsidered.

(d) An appeal of a denial or imposition of conditions by the Commission shall be subject to judicial review under Code of Civil Procedure, section 1085 (pursuant to Business and Professions Code, section 19870, subdivision (e)). Neither the right to petition for judicial review nor the time for filing the petition shall be affected by failure to seek reconsideration.

(e) Proceedings to revoke, suspend, or discipline a license, registration, permit, finding of suitability, or other approval shall be pursuant to Chapter 10 of these regulations.

Authority: Sections 19804, 19870 and 19872, Business and Professions Code.

Reference: Sections 19868, 19870, 19879, 19883, 19892, Business and Professions Code.

Chapter 6. State Gambling Licenses and Approvals for Gambling Establishments, Owners, and Key Employees

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12348. Mandatory and Discretionary Grounds for Denial of Application for a State Gambling License or Key Employee license.

(a) An application for a state gambling license or key employee license shall be denied by the Commission if any of the following apply:

(1) The Commission finds that the applicant is ineligible, unqualified, disqualified, or unsuitable pursuant to the criteria set forth in the Act or other applicable law or that granting the license would be inimical to public health, safety, welfare, or would undermine the public trust that gambling operations are free from criminal or dishonest elements.

(2) The Commission finds that the local ordinance does not conform to the requirements of Business and Professions code section 19860.

(b) An ~~applicant~~ application for a state gambling license may be denied if:

(1) The Commission finds that the applicant meets any of the criteria for license denial set forth in Business and Professions Code section 19862, subdivision (a).

(2) The Commission finds that an applicant has attempted to communicate or has communicated *ex parte*, as that term is defined in Business and Professions Code section 19872, subdivision (e), with one or more Commissioners, through direct or indirect means, regarding the merits of the application while the application is pending disposition at the Bureau or the Commission.

(3) The Commission finds that the applicant's past behavior calls into question the applicant's qualification requirements and considerations outlined in Business and Professions Code section 19856. Examples of past behavior that may be considered include, but are not limited to:

(A) Convictions which demonstrate a pattern of disregard for the law,

(B) A conviction involving gambling or gambling-related activities,

(C) A final administrative decision concluding that there was a violation of law involving gambling or gambling-related activities, or

(D) A conviction regarding or final administrative decision concluding that there was a violation of campaign finance disclosure or contribution limitations applicable to an election conducted pursuant to Business and Professions Code section 19960.

(4) The Commission finds that the applicant has, within ten years immediately preceding the submission of the application, willfully or persistently violated any of the following:

(A) Any regulation adopted by the Commission or Bureau.

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1 (B) Any condition, limitation, or directive imposed on a previously held state
2 gambling or key employee license.

3 (c) The grounds for denial set forth in this section apply in addition to any grounds
4 prescribed by statute or any grounds that would support revocation under chapter
5 10 of these regulations.

6 **Authority:** Sections 19811, 19823, 19824,19840, 19841, 19850, 19854, 19861, 19870, 19872, 19880,
7 19890, and 19982, Business and Professions Code.

8 **Reference:** Sections 19850, 19851, 19852, 19857,19858, 19859, 19860, 19862, 19863, and 19960,
9 Business and Professions Code.

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***“Printer’s Markup Copy” showing final changes to existing regulations
Provided for Ease of Reading***

Chapter 1. General Provisions

12002. General Definitions

Unless otherwise specified, the definitions in Business and Professions Code section 19805, supplemented by the definitions found in Chapter 10 of Title 9 of Part 1 of the Penal Code (commencing with section 330), shall govern the construction of this division. As used in this division:

....

- (g) "Executive Director" means the executive officer of the Commission, as provided in Business and Professions Code section 19816 or his or her designee. If the Executive Director position is vacant, the “Executive Director” means the officer or employee who shall be so designated by the Commission.

....

Authority: Sections 19811, 19823, 19824, 19840, 19841, 19853(a)(3), and 19854, Business and Professions Code; Section 7, Government Code.

Reference: Sections 7.5, 19800, 19805, 19811, 19816, and 19951, Business and Professions Code.

12047. Withdrawal of Applications

A request by an applicant to withdraw the submitted application may be made at any time prior to the final action by the Bureau. The request shall be made in writing to the Commission. The Commission, pursuant to Business and Professions Code section 19869, may deny the request or may grant the request, with or without prejudice.

- (a) If a request for withdrawal is granted without prejudice, any unused portion of the background investigation deposit shall be refunded by the Commission.
- (b) If a request for withdrawal is granted with prejudice, the applicant shall not be eligible to apply again for licensure or approval until after the expiration of one year from the date the request for withdrawal is granted. Any unused portion of the background investigation deposit shall be refunded by the Commission.
- (c) If the request for withdrawal is denied, the Bureau shall proceed with the investigation of the applicant and provide a recommendation to the Commission for action on the application.

Authority: Business and Professions Code Sections 19811, 19823, 19824, 19840, 19841, 19893, and 19951.

Reference: Business and Professions Code Sections 19859, 19867, 19869, 19880, 19881, 19890, 19891, 19951, and 19984.

1 **12048. Abandonment of Applications**

2 At any time prior to final Commission action, the Executive Director may preliminarily
3 determine that the application is abandoned. Such preliminary determination may be based
4 upon recommendation of the Bureau, failure of the applicant to respond to Bureau or
5 Commission inquiries, or notification by the applicant that the application is no longer being
6 pursued. If the determination is not based upon applicant's notice to the Commission, then
7 notice will be sent to the applicant, with a copy to the applicant's employer by certified mail
8 indicating that unless the applicant contacts the Commission within 30 days from the date of
9 the letter, the application shall be deemed abandoned. An abandoned application cannot be
10 reactivated.

11
12 **Authority:** Business and Professions Code Sections 19811, 19823, 19824, 19840, 19841, 19893, and 19951.

13 **Reference:** Business and Professions Code Sections 19859, 19867, 19869, 19880, 19881, 19890, 19891, and
14 19951.

15 **12050. Hearing Procedures; Appeal of Denial of or Imposition of Conditions on**
16 **application for license, permit, or request for finding of suitability.**

17 (a) If the Bureau, after an investigation pursuant to Business and Professions Code
18 section 19826, subdivision (a), issues a recommendation to deny, limit, restrict, or
19 condition a license, permit, or finding of suitability, the Bureau shall provide the
20 applicant with a copy of the Bureau's final report as described in Business and
21 Professions Code section 19868, subdivision (b), which includes a detailed factual
22 and/or legal basis for any recommendation as well as the Bureau's recommendation to
23 the Commission and any supplemental documents provided to the Commission at the
24 time of the report and recommendation.

25
26 Any applicant for any license, permit, or finding of suitability for whom Commission
27 staff has issued a recommendation of denial or imposition of conditions shall be given
28 notice by certified mail of the Commission meeting at which the application is
29 scheduled to be heard and the Commission staff recommendation at least 10 days
30 prior to the meeting. The applicant shall be afforded the opportunity to:

31 (1) Address the Commission by way of an oral statement at a noticed Commission
32 meeting, and/or may submit documents in support of the application, or

33 (2) Request an evidentiary hearing.

34 (b) If the applicant requests an evidentiary hearing or the Commission elects to have an
35 evidentiary hearing, the Executive Director shall set the matter for hearing pursuant to
36 Business and Professions Code sections 19870 and 19871, or pursuant to Business
37 and Professions Code section 19825 (conducted pursuant to Chapter 5 (commencing
38 with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

39 (1) If the hearing is to proceed pursuant to Business and Professions Code section
40 19825 (Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title
41 2 of the Government Code; California Code of Regulations, title 1, section 1000 et
42 seq.), the hearing shall be before an administrative law judge sitting on behalf of

1 the Commission. Notice shall be effected pursuant to Government Code section
2 11500 et seq.

- 3 (2) If the hearing is to proceed pursuant to Business and Professions Code sections
4 19870 and 19871, notice shall be effected by the Commission, and the hearing
5 before the Commission shall be conducted pursuant to Business and Professions
6 Code section 19871:

- 7 (A) The Bureau or Commission staff or Deputy Attorney General or other
8 representative presenting the case (Complainant) shall provide the applicant,
9 at least 30 calendar days prior to the hearing, a list of potential witnesses with
10 the general subject of the testimony of each witness and shall disclose and
11 make available copies of all documentary evidence intended to be introduced
12 at the hearing and not previously provided, reports or statements of parties
13 and witnesses and all other writings containing relevant evidence, including
14 all evidence made available to the Commissioners. The applicant shall
15 provide Complainant with similar information to be introduced at the hearing
16 and not previously provided at least ten calendar days prior to the hearing.
17 The Commissioners may prohibit testimony of a witness that is not disclosed
18 and may prohibit the introduction of documents that have not been disclosed.
- 19 (B) Nothing in this section confers upon an applicant a right to discovery of the
20 Commission's or Bureau's confidential information or to require production of
21 any document or information the disclosure of which is otherwise prohibited
22 by any provision of the Gambling Control Act, or is privileged from disclosure
23 or otherwise made confidential by law. Documentary evidence may be
24 redacted as needed to prevent the disclosure of confidential information.
25 Exculpatory or mitigating information shall not be withheld from the applicant,
26 but may be redacted.
- 27 (C) Within the guidelines of subsection (b)(2)(A) above, each party shall have the
28 right to call and examine witnesses; to introduce relevant exhibits and
29 documentary evidence; to cross-examine opposing witnesses on any relevant
30 matter, even if the matter was not covered in the direct examination; to
31 impeach any witness, regardless of which party first called the witness to
32 testify; and to offer rebuttal evidence. If the applicant does not testify on the
33 applicant's own behalf, the applicant may be called and examined as if under
34 cross-examination.
- 35 (D) The hearing need not be conducted according to technical rules of evidence.
36 Any relevant evidence may be considered, and is sufficient in itself to support
37 findings if it is the sort of evidence on which responsible persons are
38 accustomed to rely in the conduct of serious affairs, regardless of the
39 existence of any common law or statutory rule that might make improper the
40 admission of that evidence over objection in a civil action. A presiding officer,
41 which shall be an administrative law judge or an attorney designated by the
42 Commission, shall rule on the admissibility of evidence and on any objections
43 raised.

1 (E) Oral evidence shall be taken upon oath or affirmation, which may be
2 administered by a staff member of the Commission or by a Commissioner.

3 (F) The hearing shall be stenographically or electronically recorded by the
4 Commission.

5 (G) At the conclusion of the hearing, the Commission shall take the matter under
6 submission and may schedule future closed session meetings for
7 deliberation. In taking the matter under consideration, any Commissioner
8 who participated at the hearing shall be allowed to vote by mail or by other
9 appropriate method. Within 30 days of the conclusion of the hearing, the
10 Commission shall issue a decision which complies with Business and
11 Professions Code section 19870, subdivision (c), and shall serve the decision
12 by certified mail on the applicant and on any business entity with which the
13 applicant is associated.

14 (3) At the hearings described in subsections (b)(1) and (2) above, the burden of proof
15 rests with applicant to demonstrate why a license, permit, or finding of suitability
16 should be issued or not conditioned. The applicant may choose to represent
17 himself, herself, or itself, or may retain an attorney or lay representative at his,
18 her, or its own expense. A representative of the Bureau shall present the reasons
19 why the license, permit, or finding of suitability should not be granted or should be
20 granted with conditions imposed. In the event that the Bureau does not present
21 the case, the Commission may seek outside representation or one or more
22 Commission staff members shall be segregated and present the case.

23 (c) If the application is denied or conditions imposed:

24 (1) The Commission's decision shall provide the effective date of the decision and
25 may include further directions as to stay provisions or orders to divest.

26 (2) If the denied applicant is an officer, director, employee, agent, representative, or
27 independent contractor of a corporation licensed, registered, or found suitable by
28 the Commission, the denied applicant shall resign according to the date specified
29 in the decision and shall so notify the Commission in writing.

30 (3) If the denied applicant is an officer or director of a corporation licensed, registered,
31 or found suitable by the Commission, the corporation shall immediately remove
32 that person from office and shall so notify the Commission in writing. If the denied
33 applicant is an employee, agent, representative, or independent contractor of a
34 corporation licensed, registered, or found suitable by the Commission, the
35 corporation shall terminate its relationship with that person pursuant to the date
36 specified in the decision and shall so notify the Commission in writing. The denied
37 applicant and the corporation licensed, registered, or found suitable by the
38 Commission shall comply with Business and Professions Code section 19882.

39 (4) If the denied applicant is a general or limited partner in a general or limited
40 partnership licensed, registered, or found suitable by the Commission, the denied
41 applicant shall resign as partner. If the denied applicant is an owner or holder of an
42 interest in a limited partnership licensed, registered, or found suitable by the
43 Commission, the denied applicant and the limited partnership shall comply with

1 Business and Professions Code section 19892 and shall so notify the Commission
2 in writing.

3 (5) If the denied applicant is a principal in a business entity not otherwise described
4 above which is licensed, registered, or found suitable by the Commission, the
5 denied applicant shall resign his or her position within that entity and divest
6 whatever interest is held in that entity pursuant to the timelines and instructions
7 specified in the decision, and shall so notify the Commission in writing. The
8 business entity shall remove the denied applicant from any principal role in the
9 business entity and shall so notify the Commission in writing.

10 (6) An applicant denied a license, permit, registration, or finding of suitability, or whose
11 license, permit, registration, or finding of suitability has had conditions imposed
12 upon it may request reconsideration by the Commission within 30 days of notice of
13 the decision. The request shall be in writing and shall outline the reasons for the
14 request, which must be based upon either newly discovered evidence or legal
15 authorities that could not reasonably have been presented before the
16 Commission's issuance of the decision or at the hearing on the matter, or upon
17 other good cause for which the Commission in its discretion decides merits
18 reconsideration. The Commission Chair may delegate to the Executive Director
19 the authority to determine whether to place requests for reconsideration on the
20 Commission agenda or to act on them at the Commission staff level. If placed on
21 the Commission agenda, the applicant requesting reconsideration shall be notified
22 of the date and time of the agenda item. The granting or denial of reconsideration
23 is at the discretion of the Commission. The Commission shall notify the applicant
24 requesting reconsideration whether or not reconsideration is granted or denied
25 within 30 days of the applicant's request. If the Commission grants reconsideration,
26 the effective date of the decision shall be stayed or vacated, at the Commission's
27 discretion, while the decision is reconsidered.

28 (d) An appeal of a denial or imposition of conditions by the Commission shall be subject to
29 judicial review under Code of Civil Procedure, section 1085 (pursuant to Business and
30 Professions Code, section 19870, subdivision (e)). Neither the right to petition for
31 judicial review nor the time for filing the petition shall be affected by failure to seek
32 reconsideration.

33 (e) Proceedings to revoke, suspend, or discipline a license, registration, permit, finding of
34 suitability, or other approval shall be pursuant to Chapter 10 of these regulations.

35 Authority: Sections 19804, 19870 and 19872, Business and Professions Code.

36 Reference: Sections 19868, 19870, 19879, 19883, 19892, Business and Professions Code.

37
38 Chapter 6. State Gambling Licenses and Approvals for
39 Gambling Establishments, Owners, and Key Employees

40 **12348. Mandatory and Discretionary Grounds for Denial of Application for a**
41 **State Gambling License or Key Employee license.**

42 (a) An application for a state gambling license or key employee license shall be denied by the
43 Commission if any of the following apply:

- 1 (1) The Commission finds that the applicant is ineligible, unqualified, disqualified, or
2 unsuitable pursuant to the criteria set forth in the Act or other applicable law or that
3 granting the license would be inimical to public health, safety, welfare, or would
4 undermine the public trust that gambling operations are free from criminal or
5 dishonest elements.
- 6 (2) The Commission finds that the local ordinance does not conform to the requirements
7 of Business and Professions code section 19860.

8 (b) An application for a state gambling license may be denied if:

- 9 (1) The Commission finds that the applicant meets any of the criteria for license denial
10 set forth in Business and Professions Code section 19862, subdivision (a).
- 11 (2) The Commission finds that an applicant has attempted to communicate or has
12 communicated *ex parte*, as that term is defined in Business and Professions Code
13 section 19872, subdivision (e), with one or more Commissioners, through direct or
14 indirect means, regarding the merits of the application while the application is
15 pending disposition at the Bureau or the Commission.
- 16 (3) The Commission finds that the applicant's past behavior calls into question the
17 applicant's qualification requirements and considerations outlined in Business and
18 Professions Code section 19856. Examples of past behavior that may be considered
19 include, but are not limited to:
- 20 (A) Convictions which demonstrate a pattern of disregard for the law,
21 (B) A conviction involving gambling or gambling-related activities,
22 (C) A final administrative decision concluding that there was a violation of law
23 involving gambling or gambling-related activities, or
24 (D) A conviction regarding or final administrative decision concluding that there was
25 a violation of campaign finance disclosure or contribution limitations applicable to
26 an election conducted pursuant to Business and Professions Code section
27 19960.
- 28 (4) The Commission finds that the applicant has, within ten years immediately
29 preceding the submission of the application, willfully or persistently violated any of
30 the following:
- 31 (A) Any regulation adopted by the Commission or Bureau.
32 (B) Any condition, limitation, or directive imposed on a previously held state
33 gambling or key employee license.
- 34 (c) The grounds for denial set forth in this section apply in addition to any grounds
35 prescribed by statute or any grounds that would support revocation under chapter 10
36 of these regulations.

37 **Authority:** Sections 19811, 19823, 19824, 19840, 19841, 19850, 19854, 19861, 19870, 19872, 19880,
38 19890, and 19982, Business and Professions Code.

39 **Reference:** Sections 19850, 19851, 19852, 19857, 19858, 19859, 19860, 19862, 19863, and 19960,
40 Business and Professions Code.